

## ESTABLISHING THE TITLE OF STATES IN CERTAIN ABANDONED SHIPWRECKS

MARCH 14, 1988.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs,  
submitted the following

### REPORT

[To accompany S. 858]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE

The purpose of S. 858<sup>1</sup> is to vest title to certain abandoned historic shipwrecks that are buried in State lands to the respective States and to clarify the management authority of the States for these abandoned historic shipwrecks.

#### BACKGROUND

Historic shipwrecks are increasingly recognized as cultural resources needing greater protection. An estimated 50,000 shipwrecks are located in the navigable waters of the United States with 5-10 percent having historical significance. Technological advances have made access to shipwrecks much easier, creating greater interest in them. Historic shipwrecks are subject to multiple use demands, primarily from sport divers, underwater archaeologists and salvors with their respective recreational, preservation and commercial interests.

<sup>1</sup> Similar legislation was introduced in the House, H.R. 74 by Mr. Bennett on January 6, 1987, and H.R. 2071 introduced by Mr. Shumway on April 9, 1987.

There is currently confusion over the ownership and authority to manage abandoned shipwrecks. States have claimed title to, and regulatory authority over, abandoned historic shipwrecks located on submerged lands under their jurisdiction. The Federal Admiralty Courts have also claimed jurisdiction over the salvage of these resources.

Admiralty law, developed in the ancient Mediterranean and subsequently modified by English and American legal history, developed to encourage the salvage of commercial goods. Its focus is commercial, not cultural resource management or recreation. Aspects of Admiralty law most applicable here are the "Law of Finds"—the principle that the person finding the shipwreck can claim ownership to it—and the "Law of Salvage"—which awards those who perform acts of salvage a portion of the goods retrieved. Historic shipwrecks that contain both historic information and tangible artifacts are subject to salvage operations, with resultant loss of historical information and artifacts to the public and artifacts to the public.

Twenty-seven states have passed legislation concerning historic shipwrecks. Recent court cases have put in question the validity of these various laws. The Submerged Lands Act of 1953 gave states title to the natural resources located on submerged lands under jurisdiction, but did not specifically include cultural resources, such as shipwrecks.

#### SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Abandoned Shipwreck Act of 1987".

Section 2 provides Congressional findings regarding state jurisdiction over submerged lands which should include abandoned shipwrecks. The Committee notes that the term "abandoned" does not require the original owner to actively disclaim title or ownership. The abandonment or relinquishment of ownership rights may be implied or otherwise inferred, as by an owner never asserting any control over or otherwise indicating his claim of possession of the shipwreck.

Section 3 defines the terms "embedded", "National Register", "public lands", "shipwreck", "State", and "submerged lands". The Committee notes that for purposes of this Act, the submerged lands of the Northern Marianas are defined as those three miles distant from the coastline of the Northern Mariana Islands. The definition of "submerged lands" set forth in Section 3(f) provides geographical references regarding the shipwrecks that are covered by the bill. It is not intended to constitute an assertion of U.S. sovereignty outside the U.S. territorial sea.

Section 4 sets forth the general responsibilities of the States under this Act. Section 4(a) directs States to develop appropriate and consistent policies to protect natural resources, to guarantee recreational access and to allow for appropriate public and private recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and sites.

Section 4(b) encourages States to create underwater parks and directs that funds from the Historic Preservation Fund shall be

available to States for the study, interpretation, protection and preservation of historic shipwrecks and properties.

Section 5(a) directs the Director of the National Park Service to prepare and publish guidelines that will protect cultural resources; foster a partnership among sport divers, fishermen, archaeologists, salvors and other interests; facilitate recreational access; and recognize the interests of those individuals and groups engaged in shipwreck discovery and salvage. The Committee expects that sport divers will be allowed access to the historic shipwrecks to the fullest extent practicable. However, human safety or fragility or particular shipwrecks are legitimate exceptions from permitting such access. The Committee clearly distinguishes between granting access to these shipwrecks by sport divers and allowing collection of artifacts from such shipwrecks.

Section 5(b) directs that the guidelines be developed after consultation with the appropriate public and private sector interests. The Committee expects that such consultation will include the diverse community interested in these historic shipwrecks, including the National Oceanic and Atmospheric Administration (given its responsibility for Marine Sanctuaries) as well as representatives from the tourism industry and departments of natural resources from States and insular jurisdictions such as the Virgin Islands.

Section 5(c) directs that the guidelines be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities. The Committee intends that these guidelines be drawn so as to foster consistency for the management of these shipwrecks. The Committee expects that States and affected Federal agencies will review their current legislation and regulations to ensure that they conform with this legislation.

Section 6(a) asserts United States title to any abandoned shipwreck that is embedded in submerged lands of a State, embedded in coralline formations protected by a State on submerged lands of a State, or on submerged lands of a State and is included in, or determined eligible for inclusion in, the National Register.

Section 6(b) provides that the public shall be given notice of the location of these shipwrecks. The Committee intends that the purpose of providing such notice is to ensure that sport divers and others seeking to use abandoned shipwrecks know that these shipwrecks have been found to be historically significant. The need to give such notice must be balanced, however, against the danger that notice of location could lead to damage to these shipwrecks, such as vandalism or pilferage. The Committee recognizes that the degree of specificity with which the location of such wrecks are set forth in public notices will vary. The Committee understands that appropriate public notice of the site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, or notice in local newspapers or diving information centers.

Section 6(c) transfers title from the United States to the respective States for those shipwrecks that meet the criteria of Section 6(a). The Committee notes that the United States only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative

act. Passage of time or lack of positive assertions of right are insufficient to establish such abandonment.

Section 6(d) provides that the United States retains title to any abandoned shipwreck in or on the public lands of the United States, and that any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands. The Committee encourages the National Park Service and the States to enter into management agreements whereby any historic shipwrecks within national park boundaries will be appropriately protected.

Section 6(e) reserves other rights to the United States, by providing that the Act does not affect any rights granted previously to the States under the Submerged Lands Act, nor any navigational servitude or other authority reserved under the Submerged Lands Act by the United States. The authority of the Secretary of the Army to remove obstructions from navigable waters of the United States under the River and Harbor Act of 1899 is also preserved.

Section 7(a) describes the relationship of the Abandoned Shipwreck Act to other laws. The language specifies that the "Law of Salvage" and the "Law of Finds" do not apply to shipwrecks described in Section 6.

Section 7(b) states that this Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies. The Committee notes, for example, this Act does not affect the authority to designate and manage nationally significant shipwrecks within Marine Sanctuaries.

Section 7(c) provides that legal proceedings brought prior to the date of enactment of this Act shall not be affected by it.

#### LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATIONS

S. 858 passed the Senate on December 19, 1987, and was referred to the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries. Hearings on S. 858 were held by the Subcommittee on National Parks and Public Lands on February 4, 1988. The bill was favorably recommended to the committee on Interior and Insular Affairs on February 18, 1988. The Committee on Interior and Insular Affairs favorably reported S. 858 to the House by voice vote on February 24, 1988.

#### OVERSIGHT STATEMENT

The Committee intends to carefully monitor the implementation of this legislation to ensure compliance with the intent of the Act, but no specific oversight hearings have been conducted on this matter. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b)(2).

#### INFLATIONARY IMPACT STATEMENT

The Committee finds that enactment of this measure would have no inflationary impact on the national economy.

#### COST AND BUDGET ACT COMPLIANCE

The Committee has determined that no increase in the Federal expenditures will result from enactment of this bill. The report of

the Congressional Budget Office which the Committee adopts as its own, follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 24, 1988.*

Hon. MORRIS K. UDALL,  
*Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered, reported by the House Committee on Interior and Insular Affairs, February 24, 1988. We estimate that this bill would have no significant impact on the budget of the federal government, or on those of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,  
*Acting Director.*

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## ESTABLISHING THE TITLE OF STATES IN CERTAIN ABANDONED SHIPWRECKS

MARCH 28, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

### REPORT

together with

### ADDITIONAL AND DISSENTING VIEWS

[To accompany S. 858]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF LEGISLATION

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are embedded in or located on State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

#### SUMMARY OF BILL

S. 858 asserts U.S. title to three classes of abandoned shipwrecks in State waters: (1) those embedded in submerged lands of a State; (2) those embedded in coralline formations protected by a State on submerged lands; and (3) those on submerged lands of a State and included or determined eligible for inclusion in the National Register of Historic Places. Title to shipwrecks in these categories is transferred to the States within whose waters they lie. S. 858 de-

clares as Congressional policy that States should manage these wrecks to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery. S. 858 also directs the Director of the National Park Service, after consultation with all affected interests, to develop guidelines for States and federal agencies to use in managing these shipwrecks. S. 858 specifically supersedes the law of salvage and the law of finds with respect to shipwrecks for which title is asserted.

#### BACKGROUND AND NEED

The central issue intended to be resolved by the legislation is the ownership and the authority to manage certain abandoned shipwrecks on State lands. In 1953, Congress passed the Submerged Lands Act (SLA, 43 U.S.C. 1301 *et seq.*) and transferred ownership to the States of all natural resources and submerged lands out to a distance of three miles (except in the case of Texas, Puerto Rico, and the west coast of Florida where it is three marine leagues or nine statute miles).

Congress did not specify in the SLA whether the states also owned non-natural objects such as shipwrecks that rested on or within submerged lands. Notwithstanding this lack of clarity, some 28 States have laws that pertain to the management of abandoned or historic shipwrecks in state waters. It is estimated that the total number of shipwrecks in State waters is more than 50,000, of which some 5-10 percent may be of historical significance.

Existing State laws assert title to shipwrecks in State waters and prescribe regulations for the protection and salvage of wrecks of historic significance. To the Committee's knowledge, none of the existing laws prohibit access by sport divers, although those wishing to recover artifacts from wrecks are frequently required to obtain state permits.

States have been constrained in applying their shipwreck management and preservation laws because of conflicts with federal admiralty principles and mixed judicial decisions. Under Article III, section 2 of the Constitution and 28 U.S.C. 1333, federal district courts have original jurisdiction over all admiralty and maritime cases. This jurisdiction includes claims for the salvage of abandoned shipwrecks. In exercising this jurisdiction, federal courts apply common law principles of admiralty, including the law of finds and the law of salvage.

Under the American law of finds, the finder of an abandoned shipwreck is allowed to keep the wreck and its cargo. Under the law of salvage, the owner of the shipwreck retains title to the wreck but the salvor may be entitled to a salvage award.

The majority of federal courts presented with a salvage claim to resolve have decided that (1) the SLA did not specifically assert U.S. title to shipwrecks and transfer that title to the states; and (2) state historic preservation laws whose provisions are inconsistent with federal common law admiralty principles are superseded by those principles under the supremacy clause of the Constitution. (*Cobb Coin Co., Inc. v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1981); *Treasure Salvors, Inc.*

*v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978).) A minority of courts have decided that the SLA did provide the states with jurisdiction over shipwrecks in state waters. (*Subaqueous* the latter Committee on April 21, 1987.

The Subcommittee reported H.R. 74 with an amendment in the nature of a substitute on August 5, 1987. As reported, H.R. 74 would transfer the title of certain abandoned shipwrecks to States conditioned on the States developing plans for the protection of the shipwrecks and having those plans approved by the Secretary of the Interior within five years from enactment of the bill. If the State plan is not approved, title reverts to the United States. The bill reported by the Subcommittee also establishes a 15-member advisory committee to assist the Secretary of the Interior in the development of guidelines for the States to use in the management of historic shipwrecks.

S. 858 was introduced on March 26, 1987. On December 2, 1987, the Senate Committee on Energy and Natural Resources ordered the bill, as amended, favorably reported by a 19-0 roll call vote. On December 19, 1987, S. 858 was passed by the Senate on a voice vote. On December 20, 1987, the bill was jointly referred to the Committees on Merchant Marine and Fisheries and Interior and Insular Affairs.

Within the Committee on Interior and Insular Affairs, a hearing was held on S. 858 by the Subcommittee on National Parks and Public Lands on February 4, 1988. The bill was favorably recommended to the full Committee on February 18, 1988. The Committee on Interior and Insular Affairs ordered S. 858 favorably reported to the House *Exploration and Archaeology, Ltd., v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 577 F. Supp. 597 (D. Md. 1983).

At a minimum, these decisions have led to confusion over the ownership of, and responsibility for, historic shipwrecks in State waters. This confusion led to the introduction of historic shipwreck legislation in the 97th Congress and the passage by the House, in the 98th Congress, of H.R. 3194. The Abandoned Shipwreck Act of 1984 would have transferred title of a certain class of historic shipwrecks lying on submerged lands to the States. The Senate took no action on H.R. 3194.

#### COMMITTEE ACTION

The original House legislation on abandoned shipwrecks in the 100th Congress was H.R. 74, introduced on January 6, 1987, by Congressman Charles Bennett and four cosponsors. As introduced, H.R. 74 is similar to S. 858. On April 9, 1987, Congressman Norman Shumway introduced H.R. 2071, a bill to establish that federal district courts exercising admiralty jurisdiction have the exclusive power to control and dispose of abandoned historic shipwrecks located in State waters. H.R. 2071 provided guidelines for the court to follow to protect historically significant shipwrecks and also created a right of intervention for affected states. Both bills were jointly referred to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries and were the subject of a hearing in the Oceanography Subcommittee of by voice vote on

February 24, 1988, and filed its report on the legislation on March 14, 1988 (Rept. 100-514, Part 1).

On March 23, 1988, the Committee on Merchant Marine and Fisheries marked up S. 858. Congressman Shumway offered an amendment to make the congressional policy statement about rights of access in section 4 of the bill binding on the States and to make any dispute about State implementation of the rights of access reviewable in a federal district court. Mr. Shumway's amendment was defeated by a 14-25 roll call vote.

Mr. Shumway offered a second amendment to conform the geographic scope of the Act to three nautical miles off the U.S. coast, consistent with international law and as recommended by the State Department. This amendment was defeated by a voice vote.

No other amendments were offered to the bill and it was ordered reported to the House, without amendment, by a 30-10 roll call vote. A majority quorum was present.

#### ROLLCALL VOTE ON S. 858—FINAL PASSAGE

Member	Yea	Nay
Walter B. Jones, North Carolina.....	X	
Mario Biaggi, New York.....		
Glenn M. Anderson, California.....	P	
Gerry E. Studds, Massachusetts.....	X	
Carroll Hubbard, Jr., Kentucky.....	X	
Don Bonker, Washington.....	P	
William J. Hughes, New Jersey.....	X	
Mike Lowry, Washington.....	X	
Earl Hutto, Florida.....		X
W. J. (Billy) Tauzin, Louisiana.....	P	
Thomas M. Foglietta, Pennsylvania.....	P	
Dennis M. Hertel, Michigan.....	P	
Roy Dyson, Maryland.....	X	
William O. Lipinski, Illinois.....	X	
Robert A. Borski, Pennsylvania.....	X	
Thomas R. Carper, Delaware.....	X	
Douglas Bosco, California.....	X	
Robin Tallon, South Carolina.....	P	
Solomon P. Ortiz, Texas.....	P	
Charles E. Bennett, Florida.....	X	
Thomas J. Manton, New York.....	X	
Owen B. Pickett, Virginia.....	P	
Joseph E. Brennan, Maine.....	X	
George J. Hochbrueckner, New York.....	P	
Bob Clement, Tennessee.....	X	
Robert W. Davis, Michigan.....		P
Don Young, Alaska.....		P
Norman F. Lent, New York.....		P
Norman D. Shumway, California.....		X
Jack Fields, Texas.....		X
Claudine Schneider, Rhode Island.....	X	
Herbert H. Bateman, Virginia.....	P	
Jim Saxton, New Jersey.....	X	
John R. Miller, Washington.....	X	
Helen Delich Bentley, Maryland.....	P	
Howard Coble, North Carolina.....		X
Mac Sweeney, Texas.....		P
Curt Weldon, Pennsylvania.....	X	
Patricia Saiiki, Hawaii.....	X	
Wally Herger, California.....		X
Jim Bunning, Kentucky.....		X

## ROLLCALL VOTE ON S. 858—FINAL PASSAGE—Continued

Member	Yea	Nay
Ernest L. Konnyu, California.....		
Total.....	30	10

Note.—Those Members voting by proxy are indicated with a "P." Those Members voting in person are indicated by "X."

## SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Abandoned Shipwreck Act of 1987."

Section 2 contains the Congressional finding that states should have jurisdiction over and management responsibility for certain abandoned shipwrecks in state waters and submerged lands. The first finding in subsection (a) recognizes that, under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*), states already have the responsibility for all living and nonliving resources in state waters and submerged lands. The second finding in subsection (b) confirms that, consistent with their existing responsibility, states also should have the responsibility for certain abandoned shipwrecks. Abandoned shipwrecks within the scope of this Act include those which have been deserted and to which the owner has relinquished all ownership rights. Except in the case of U.S. warships or other public vessels (which require an affirmative act of abandonment), the act of abandonment may be implied or inferred from the circumstances of the shipwreck as when an owner has never asserted any control over or otherwise indicated a claim of possession.

Section 3 defines the specific terms used in the Act, including "embedded," "National Register," "public lands," "shipwreck," "state" and "submerged lands". The Committee does not consider that diving equipment, normally worn by a recreational diver while exploring or viewing a shipwreck site, constitutes tools of excavation within the meaning of this term as used in the definition of "embedded". The Committee notes that, for purposes of this Act, the submerged lands of the Commonwealth of the Northern Marianas include those lands three geographic miles seaward from the coastline of the Northern Mariana Islands. The term "submerged lands" set forth in section 3(f) is not intended to constitute an assertion of U.S. sovereignty under international law beyond the currently recognized U.S. territorial sea limit. Those states (Texas, Florida, and Puerto Rico) which have submerged lands extending beyond the current U.S. territorial sea limit shall exercise their jurisdiction over abandoned shipwrecks in these waters consistent with international law principles.

Section 4(a) sets forth the Congressional policy under which states are to carry out their responsibilities for abandoned shipwrecks to which title is transferred under this Act. Two of the central purposes of this Act are contained in this section: (1) to clarify that state waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups; and (2) to provide that reasonable access by the public to certain abandoned shipwrecks be permitted. It is the intent of the Committee that

states manage shipwrecks covered by Section 6 of this Act so as to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and the environmental integrity of the shipwrecks and their sites.

The Committee intends that states should provide sport divers with recreational access to all non-historic shipwrecks. The states can take into account human safety or the fragility of particular shipwrecks as legitimate exceptions to this policy. A State law that does not provide a method of legal recourse to individuals denied access is inconsistent with this bill and the Committee's intent. The Committee distinguishes between providing non-destructive access to shipwrecks and the salvage or collection of artifacts from historic shipwrecks. Further, it is not the intent of the Committee that states discourage private salvage of shipwrecks that is consistent with the protection of historical values and the environmental integrity of the shipwrecks and the sites.

Section 4(b) encourages states to create underwater parks or areas to provide additional protection for shipwrecks subject to this Act. Federal funds available to states from grants under the Historic Preservation Fund established under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) shall be available to states for the study, interpretation, protection, and preservation of historic shipwrecks and properties covered by this Act. The Committee encourages states to work with sport divers to locate shipwrecks and establish underwater parks.

Section 5 authorizes the issuance of federal guidelines to encourage the development of underwater parks and to foster the administrative cooperation necessary for the comprehensive management of abandoned shipwrecks and underwater resources under this Act. The Secretary of the Interior, acting through the Director of the National Park Service, shall prepare and publish the guidelines in the Federal Register within nine months from the date of enactment of this Act. The guidelines should attempt to maximize the enhancement of underwater cultural resources; foster a partnership among sport divers, fishermen, archeologists, salvors and other interested parties; facilitate recreational access and utilization of shipwrecks; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage. The Committee encourages the Director to consider existing uses by both sport divers and archeologists in developing the guidelines.

Subsection 5(b) requires the guidelines to be developed only after consultation with all appropriate public and private sector interests, including the Secretary of Commerce (acting through the Under Secretary for Oceans and Atmosphere), the Advisory Council on Historic Preservation, sport divers, state Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen. The Committee encourages the Director of the National Park Service to form a committee of these interest groups for the purpose of assisting the Director in the development of the guidelines.

Subsection 5(c) provides that the guidelines shall be available to assist states and appropriate Federal agencies in developing legisla-

tion and regulations to carry out their responsibilities under this Act. While recognizing that the guidelines are non-binding, the Committee strongly encourages the states to act consistently with the guidelines. If an affected party believes that a state is not acting generally consistent with the guidelines, that individual should bring that fact to the state's attention and legal recourse should be provided under state law. Federal agencies also should manage their historic shipwrecks consistent with the guidelines to the extent consistent with other applicable federal law.

Section 6 defines the rights of ownership to those abandoned shipwrecks covered by this Act. Section 6(a) asserts the title of the United States to any abandoned shipwreck that is: (1) embedded in submerged lands of a state; (2) embedded in coralline formations protected by a state on submerged lands of a state; or (3) on submerged lands of a state and is included in or determined eligible for inclusion in the National Register. This assertion of title by the United States is an exercise of its recognized sovereign prerogative to assert title to abandoned shipwrecks that lie within waters of the United States. (*See Treasure Salvors, Inc., v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 567 F.2d 330 (5th Cir. 1978).) The title asserted in subsection (a)(1) is also consistent with the recognized exception from the law of finds for shipwrecks embedded in submerged lands of a state. (*See Chance v. Certain Artifacts Found and Salvaged*, 606 F. Supp. 801 (S.D. Ga. 1984), *aff'd* 775 F. 2d 302 (11th Cir. 1985).) The Committee intends, with respect to the second category, to cover any abandoned shipwreck that is embedded in a coral formation protected by a state such as in a state park or protected by state order or regulation. As to those shipwrecks in the third category, the Committee intends that the abandoned shipwrecks should meet the criteria for eligibility for inclusion in the National Register of Historic Places (36 CFR 60.4), but does not intend that the shipwreck must be listed formally on the Register.

Section 6(b) provides that the public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The notice may be provided by a state or federal agency. The notice should advise the public that the wreck comes within one of the three categories of shipwrecks to which title has been asserted. The degree of specificity of the notice will depend on balancing the need to inform the public of the exact location of the shipwreck against the possible need to protect an historic shipwreck from possible vandalism. Therefore, the type of notice may vary from shipwreck to shipwreck and may be accomplished in different ways, including publication by the State of notice in local newspapers, publication in the FEDERAL REGISTER, the marking of nautical charts, onsite markers, or publication of notice in local diving information centers.

Except as provided under section 6(d), section 6(c) transfers title of the abandoned shipwrecks that fall within section 6(a) from the United States to the respective state in which the shipwreck is located. The transfer of title takes place immediately upon enactment of this Act and simultaneously with the U.S. assertion of title under section 6(a).

Section 6(d) contains an exception from the transfer of title to the states for any abandoned shipwreck in or on the public lands of the United States or in or on any Indian lands. The United States Government retains title, which it has asserted, to any abandoned shipwreck that is located in or on the public lands of the United States as these lands are defined in the Archaeological Resource Protection Act of 1979 (ARPA, 16 U.S.C. 470aa-470ll). The Committee encourages the National Park Service and the states to enter into management agreements for abandoned historic shipwrecks within national park boundaries. Any abandoned shipwreck located in or on any Indian lands, also as defined in the ARPA, remains the property of the Indian tribe owning such lands.

Section 6(e) preserves the rights granted to the United States and to the states under certain provisions of the Submerged Lands Act and the Rivers and Harbors Act of 1899. This provision recognizes the traditional navigational servitude reserved to the United States under these two laws.

Section 7 explains the relationship between this Act and other federal law. Section 7(a) specifies that the law of salvage and the law of finds shall not apply to abandoned shipwrecks to which title has been asserted under section 6. The law of salvage and the law of finds have been applied by federal admiralty courts to claims for the salvage of abandoned shipwrecks. Under the American law of finds, the finder of an abandoned shipwreck may be declared the owner of the wreck or its cargo; under the law of salvage, the owner retains title to the shipwreck, but, depending on certain factors, the finder may be entitled to a salvage award.

The Committee finds that these admiralty principles are not well-suited to the preservation of historic and other shipwrecks to which this Act applies. Abandoned shipwrecks covered by this Act are not considered by the Committee to be in marine peril, necessitating their recovery by salvage companies. Further, the Committee intends that states should have title to historic and certain other abandoned shipwrecks in state waters, thereby eliminating the assumption that there is no owner of these wrecks. This supersession of the law of finds also recognizes that wrecks embedded in submerged lands of a state belong to the state. In light of today's experience and conditions, the Committee does not believe that the law of finds and the law of salvage well serve the protection of our nation's maritime heritage. This heritage is best protected by states acting through their historic preservation programs consistent with federal guidance. The Committee also believes that it is acting fully within its authority under Article III, section 2, of the Constitution (the admiralty clause) and the necessary and proper clause of the Constitution by modifying admiralty law in this way. The Committee intends to carve out a limited exception from general admiralty principles for those classes of shipwrecks to which this Act applies. All other shipwrecks, including those in federal waters, remain subject to the uniform principles of admiralty law, except as may be provided in other federal law.

Section 7(b) affirms that this Act does not change the laws of the United States relating to shipwrecks, other than those to which this Act applies. The Committee notes, for example, that this Act does not change the authority of the Under Secretary for Oceans

and Atmosphere in the Commerce Department to designate and manage abandoned shipwrecks within national marine sanctuaries in state waters. The Committee encourages the Under Secretary and the states to work together to manage abandoned shipwrecks within national marine sanctuaries in state waters.

Section 7(c) provides that this Act does not affect any legal proceeding filed prior to the date of enactment of this Act.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to the requirements of clause (2)(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of S. 858 will have no significant inflationary impact upon prices and costs in the operation of the national economy.

#### COST OF THE LEGISLATION

Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires a statement of the estimated cost to the United States which would be incurred in carrying out S. 858. However, under paragraph (d) of Clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause (2)(1)(3)(A) of Rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of S. 858 have been made by the Committee during the 100th Congress.

2. With respect to the requirements of Clause (2)(1)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, S. 858 does not contain any new budget authority or tax exemptions.

3. With respect to the requirement of clause (2)(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of S. 858.

4. With respect to the requirements of clause (2)(1)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following estimate of the cost of S. 858 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 28, 1988.*

HON. WALTER B. JONES,  
*Chairman, Committee on Merchant Marine and Fisheries, U.S.  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Merchant Marine and Fisheries on March 23, 1988. We estimate that this bill would have no

significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,  
*Acting Director.*

#### DEPARTMENTAL REPORTS

GENERAL COUNSEL OF THE  
U.S. DEPARTMENT OF COMMERCE,  
*Washington, DC, February 17, 1988.*

HON. WALTER B. JONES,  
*Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce on S. 858, the "Abandoned Shipwreck Act of 1987."

Section 6 of S. 858 asserts title for the United States to all abandoned shipwrecks that are: (1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on its submerged lands; or (3) on submerged lands of a State when the shipwreck is included in, or eligible for inclusion in, the National Register of Historic Places. Except for a shipwreck located in or on the public lands of the United States, the title of the United States asserted by section 6 is then transferred by section 6 to the State in or on whose submerged lands the shipwreck is located. Section 7(a) states that the laws of salvage and finds shall not apply to shipwrecks covered by section 6. Section 7(b) states that S. 858 shall not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies.

The Department of Commerce supports enactment of S. 858 but believes it should be amended as set forth below.

Although S. 858 as passed by the Senate asserts United States title for all abandoned historic shipwrecks lying in territorial waters, it does not retain United States title for those shipwrecks of "special national significance." Further, it would not allow the United States Government to reassert title to any abandoned historic shipwreck of national significance that is discovered in territorial waters in the future. As a result, it does not adequately protect the national interest in such shipwrecks.

We have carefully examined the relationship of S. 858 to title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) with respect to the protection of historic shipwrecks lying in territorial waters. Title III of the MPRSA authorizes the Secretary of

Commerce to designate discrete areas of the marine environment as national marine sanctuaries if he determines, in pertinent part, that the area is of "special national significance due to its resource and human-use values" and existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education. As most recently amended in 1984, section 303 of title III directs the Secretary to consider, among other factors, an area's historic, cultural, and archaeological significance in determining whether the area is of special national significance. Thus, the 1984 amendments provide for the designation and protection of abandoned historic shipwrecks as national marine sanctuaries if they are of "special national significance" and existing Federal and State authorities are inadequate to protect them. The National Marine Sanctuary Program has in place detailed policies and guidelines for protecting historic resources located in national marine sanctuaries.

Some abandoned historic shipwrecks located in territorial waters are within national marine sanctuaries established to protect natural and cultural resources of special national significance. Because section 7(b) specifies that S. 858 shall not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies, S. 858 would not affect the existing regulatory authority of the Secretary of Commerce under title III of the MPRSA with respect to abandoned shipwrecks on State-owned submerged lands in existing or future national marine sanctuaries. However, in the absence of a proprietary interest (*i.e.*, United States title), questions remain as to the authority of the Secretary, under current law or under S. 858, to control the disposition of recovered historic resources of national significance. We believe that the national interest in abandoned shipwrecks of special national significance can only be fully protected if the authority of the Secretary to protect such shipwrecks within national marine sanctuaries is supported by United States title.

The United States Government could fully protect the national interest in abandoned historic shipwrecks of special national significance located in state waters if section 6 is amended in accordance with the enclosed draft language to retain title in the United States for those shipwrecks and to authorize the United States Government to reassert title to any abandoned historic shipwreck discovered in territorial waters in the future that is of sufficient national significance to merit inclusion in a future national marine sanctuary.

We have been advised by the Office of Management and Budget that there is no objection to submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT H. BRUMLEY,  
*Deputy General Counsel.*

Enclosure.

DEPARTMENT OF COMMERCE PROPOSED AMENDMENT TO S. 858

(a) Section 6(d) should be amended to read as follows:

“(d) EXCEPTION.—Any abandoned shipwreck in or on the public lands of the United States, any abandoned shipwreck in or on the submerged lands of a State and managed by law or agreement by a Federal agency, and any abandoned shipwreck in or on the submerged lands of a State and within a national marine sanctuary established under title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*) is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.”.

(b) Section 6 should be amended further by redesignating subsection (e) as (f) and adding immediately after subsection (d) the following new subsection (e):

“(e) REASSERTION OF TITLE.—“(1) The United States may reassert title to any abandoned shipwreck that was transferred to a State under subsection (c) of this section if, after the date of enactment of this Act, the abandoned shipwreck is found to be of sufficient national significance to merit inclusion within a national marine sanctuary under the provisions of title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*).

“(2) Reassertion of United States title to an abandoned shipwreck under paragraph (1) of this subsection is effective on the date designation of the national marine sanctuary becomes effective, but the reassertion is subject to any right, title or interest to such shipwreck that was granted by the State before such date by permit, contract, license, or otherwise.”.

U.S. DEPARTMENT OF STATE,  
Washington, DC, February 19, 1988.

HON. WALTER B. JONES,  
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: Pursuant to your request of January 7, 1988, I am pleased to provide the Department's views on S. 858, entitled the "Abandoned Shipwreck Act of 1987." This Department has, apart from the comments below, no objections to the legislation.

As drafted, S. 858 would assert U.S. title to any abandoned shipwreck located in or on submerged lands of a State. The term "submerged lands" is defined in Section 3(f) of the draft legislation as the lands:

(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

There is a difficulty with the definitions incorporated, at least with respect to Texas, Florida and Puerto Rico, because each of those jurisdictions has rights in submerged lands out to a distance of three marine leagues (nine nautical miles).

Notwithstanding these special rights of Texas, Florida and Puerto Rico, the United States claims only a three-nautical-mile territorial sea. The United States asserts no sovereignty seaward of that three-mile limit, even off the coasts of those jurisdictions. S. 858 would, however, assert U.S. *title* to abandoned shipwrecks more than three nautical miles off the Texas, Florida and Puerto Rico coasts, and title could only derive from sovereignty. This assertion cannot be supported in international law. To be sure, the areas in question fall within the U.S. exclusive economic zone (EEZ) and are part of the U.S. continental shelf. A country's sovereign rights in its EEZ and on its shelf do not, however, extend to ownership rights of objects that are not natural resources, which category does not comprise shipwrecks.

There appears to be a simple way to address this problem. That is to limit assertion of U.S. title to shipwrecks beneath "navigable waters," incorporating by reference the definition of that term in 33 U.S.C. 2316(7). Use of that definition will ensure that there is no assertion of ownership rights beyond the territorial sea.

A second matter involves vessels that, at the time of their sinking, were governmental vessels engaged in non-commercial service (generally, but not always, warships). The Department appreciates the careful manner in which S. 858 limits U.S. assertion of title to shipwrecks that are *abandoned*. As you know, the U.S. only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act; mere passage of time or lack of positive assertions of right are insufficient to establish such abandonment. This fact has two implications for the application of S. 858. First, we understand that the same presumption against abandonment will be accorded vessels within the U.S. territorial sea that, at the time of their sinking, were on the non-commercial service of another State. Second, S. 858 does not apply to U.S. warships sunk within the territorial sea, unless they have been affirmatively abandoned by the U.S. Government.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With best wishes,  
Sincerely,

J. EDWARD FOX,  
*Assistant Secretary, Legislative Affairs.*

#### CHANGES IN EXISTING LAW

If this bill is enacted, it will make no changes in existing statutory law.

ADDITIONAL VIEWS OF MR. COBLE, MR. DAVIS OF MICHIGAN, MR. FIELDS, MR. HERGER, MR. LENT, AND MR. SHUMWAY ON S. 858

S. 858 is designed to address conflicting state and Federal court decisions which have created confusion over the ownership and control of abandoned shipwrecks located within state territorial waters. While S. 858, as passed by the Full Committee, may achieve this end by merely transferring title to states and abdicating any federal role with regard to shipwrecks covered by this Act, it will also create a variety of new and disturbing legal problems for these historic resources.

First, S. 858 *does not guarantee reasonable access* to shipwrecks by recreational divers and salvors. Despite numerous concerns expressed by recreational divers and salvors that they will be barred access to these vessels, the Committee voted down a provision which would guarantee that the states would allow benign access by these groups. By leaving the Sec. 4 provisions nonbinding, they are unenforceable and thus may not result in the uniformity sought by the bill. As a result, there is no way the Federal Government can ensure that a state will not capriciously restrict access of sport divers or other legitimate private sector interests.

Second, S. 858 *does not comport with international law*. Under the bill, title to shipwrecks is claimed by the U.S. (and transferred to states) in areas beyond three nautical miles off of Texas, Florida, and Puerto Rico. International law recognizes a state's management jurisdiction to non-natural resources, like shipwrecks, in this area of the oceans, but not title.

Third, this bill *creates conflicts with the national Marine Sanctuary Program* established under Title III of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1431-1439). Under the Federal program, the National Oceanic and Atmospheric Administration manages areas within the U.S. Exclusive Economic Zone of national significance due to their conservation, recreational, educational, ecological, historical, research, or aesthetic importance; one example of such a sanctuary is the U.S.S. *Monitor*, the famous Civil War vessel. Under S. 858, states would take title to any abandoned shipwreck in a National Marine Sanctuary within territorial waters. This will likely lead to conflicts between Federal sanctuary regulations and the state shipwreck program.

Fourth, *abandoned shipwrecks which are retained by the United States (on public lands) need not be managed consistently with the guidelines* prepared under Section 5 of the bill to balance the interests of all affected groups. In addition, these guidelines are devoid of any diving safety requirement.

Fifth, *admiralty law is not respected* under this bill. Under Article III, Section 2 of the U.S. Constitution, Federal district courts have original jurisdiction over all admiralty and maritime issues.

This includes the salvage of shipwrecks. Section 7 of S. 858 abrogates this 200-year old tradition by specifically removing affected shipwrecks from the admiralty laws of salvage and finds.

Sixth, *the bill is overly expansive, applying to almost all shipwrecks* regardless of historical value. The intention of the bill, as announced by its drafters, is to protect historic shipwrecks from destruction. However, the bill sweeps much too broadly, awarding title to any abandoned shipwreck which is "embedded" on lands beneath state waters, as well as any abandoned shipwreck on or eligible for inclusion on the National Register of Historic Places. As almost any diver knows, ocean currents will drive shifting sands to cover items placed on the ocean floor almost immediately. Therefore, recent shipwrecks with no historic value are also covered by S. 858.

All these problems with S. 858 were identified at the Full Committee markup, and many Members acknowledged that these are deficiencies that should be repaired. However, because of a perception that if S. 858 were altered from the version passed unanimously from the Senate, it would not again pass from that Chamber, none of these needed changes were made. This is shortsighted, unnecessarily cautious, and certainly not consistent with our responsibilities to enact the best legislation possible.

NORMAN D. SHUMWAY.

WALLY HERGER.

BOB DAVIS.

NORMAN F. LENT.

HOWARD COBLE.

JACK FIELDS.

## DISSENTING VIEWS OF MR. SHUMWAY ON S. 858

While I appreciate the efforts of Mr. Bennett, who has guided S. 858 through the Merchant Marine and Fisheries Committee, I oppose the bill as written because it fails to protect the legitimate interests of all the groups affected by this bill. Simply stated, S. 858 as written does not contain any binding provisions to ensure that a state, after receiving title to the shipwrecks off its coast, will protect the right to access for the more than four million sport divers in the U.S. Nor does it contain any assurance that a state will allow private salvors to conduct salvage operations—even if the salvage operation can be conducted in a responsible fashion which ensures that the integrity of the wreck is preserved.

S. 858 as written accomplishes only one thing—and that is to unconditionally give states title to a certain class of “abandoned shipwrecks”. By doing so, the bill only addresses the question of ownership of these wrecks—nothing more, nothing less.

Unfortunately, in the past, states, which have assumed they have had legal title to these wrecks but which several Federal court decisions have said otherwise, have seen fit to greatly restrict activities on shipwrecks in their state waters. Texas, for example, has legislated in essence that private salvors can not even explore for vessels—historic or otherwise. Now I am not suggesting that we should allow salvors unrestricted access once a wreck is found; however, if S. 858 as written were passed, we would likely see a situation where state regulation, to benefit state-sponsored archeology, forbids private salvage operations. Such state regimes would dramatically reduce the number of private exploration activities and, correspondingly, the number of shipwrecks discovered. How, then, by passing S. 858 are we protecting shipwrecks and promoting opportunities for learning from these historic vessels if the likely result will be state laws which create major disincentives to private efforts to discover historic shipwrecks?

It has only been in the past three years or so that the sport diving public has become aware of this proposal, and far and away the majority of the divers oppose S. 858—and the key here is that they are the one group that is by far the most affected. I have personally received hundreds of letters and post cards from divers all around the country and 99% express strong opposition to S. 858.

I believe a better approach to handling shipwrecks is embodied in H.R. 2071, legislation I introduced last year which takes positive steps to ensure that historic protection of abandoned shipwrecks will be implemented as a matter of national policy, and which protects the private sector interest in both sport diving and salvage.

Article III section 2 of the U.S. Constitution states, “The judicial power shall extend to . . . all cases of admiralty and maritime jurisdiction.” H.R. 2071 builds upon, rather than abandons, a body of admiralty law which is constitutionally founded and which has en-

volved in our courts over centuries. The bill does so by requiring the courts to impose upon salvors new historic protection requirements to responsibly regulate the salvage activity; H.R. 2071 then requires salvors to adequately meet these requirements as a prerequisite to receiving a salvage award from the court.

My legislation also specifically allows states or Federal agencies (or anyone for that matter) to intervene in the salvage litigation as a trustee of the public interest to ensure protection of the historical and archaeological significance of these shipwrecks. This would allow, for example, a state to place an agent or employee on board a salvage vessel to monitor a salvage operation. States could also request an award of a representative sample of the artifacts or treasures recovered during salvage which otherwise are not represented in their state museums, and which are important to the preservation of the nation's or the state's cultural, historical, or scientific heritage.

With respect to sport diving access, H.R. 2071 actually goes further than leaving intact the status quo regarding access by sport divers. Specifically, H.R. 2071 provides a clear, direct Federal statement to district courts regarding access for sport divers; whereas S. 858 contains only "Sense-of-the-Congress" type language regarding sport diving access.

In summary, H.R. 2071 balances the concerns of each of the major interest groups involved in this issue, and I believe is far preferable to the approach taken in S. 858 as reported by the Committee which does not achieve this appropriate balance.

NORMAN D. SHUMWAY.

